

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Emergency Alert System)	EB Docket No. 04-296
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)	
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To: The Commission

OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

Pursuant to Section 1.429(f) of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ DIRECTV Latin America, LLC (“DTVLA”) files this opposition in response to the Petition for Partial Reconsideration of PanAmSat Corporation, SES Americom, Inc. and Intelsat, Ltd. (collectively, the “FSS Group”)² of the First Report and Order (“*R&O*”) issued in the above-captioned proceeding.³ DTVLA provides direct-to-home (“DTH”) video programming services to subscribers in Puerto Rico and other locations in Latin America and the Caribbean. DTVLA distributes its video programming services using transmission capacity on a

¹ 47 C.F.R. § 1.429(f).

² See Petition for Partial Reconsideration of PanAmSat Corporation, SES Americom, Inc. and Intelsat, Ltd., EB Docket No. 04-296 (filed Dec. 27, 2005) (“Petition”).

³ See *Review of the Emergency Alert System*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625 (2005) (“*R&O*”).

satellite owned and operated by PanAmSat Corporation. DTVLA's opposition is limited to the FSS Group's proposal to apply the EAS rules directly to DTH programming distributors.

In the *R&O* the Commission modified its Emergency Alert System ("EAS") rules to require DBS providers to participate in national EAS activations by discontinuing regular programming and providing the national EAS message to viewers of all channels.⁴ The Commission further held that DBS providers are required to conduct EAS tests each month on at least 10 percent of the total channels they provide.⁵ For purposes of these rules, a "DBS provider" is defined to include entities licensed to operate satellites in the Ku band fixed satellite service ("FSS") and that sell or lease capacity to a video programming distributor that offers service directly to consumers.⁶ Thus, the EAS obligations apply to FSS licensees but not to the video programming distributors that buy or lease capacity from FSS operators, such as DTVLA.⁷ However, the Commission further held that FSS licensees may delegate their EAS responsibilities to DTH-FSS programming distributors and may rely on certifications of compliance with the EAS rules from such programming distributors.⁸

The FSS Group requests reconsideration of the Commission's decision to apply the EAS requirements to FSS licensees instead of the video programming distributors that use FSS transmission capacity. The FSS Group contends that the Commission has jurisdiction to impose EAS obligations directly on DTH-FSS programming distributors principally because they use

⁴ *Id.* ¶ 53.

⁵ *Id.* ¶ 57.

⁶ *Id.* ¶ 49. More specifically, the EAS requirements apply to DTH-FSS services exceeding the minimum channel threshold established in Section 25.701 of the Commission's rules. *Id.*

⁷ *Id.*

⁸ *Id.* at n.152.

receive-only earth stations to deliver service to subscribers.⁹ However, recognizing that the Commission long ago eliminated the requirement that receive-only earth stations be licensed, the FSS Group argues in the alternative that the Commission could reinstate the licensing requirement for receive-only earth stations used to deliver video programming service and condition such licenses on compliance with the EAS rules.¹⁰

The FSS Group's suggestion that the Commission contort the limits of its statutory authority to apply the EAS rules directly to DTH-FSS programming distributors should be rejected. The Commission's licensing authority under Title III generally runs to the FSS operator, not to the video programming distributors that merely buy or lease capacity from FSS operators.¹¹ Consequently, it makes no sense in terms of administration, monitoring and enforcement to impose the EAS rules in piecemeal fashion on programming distributors. Rather, as the Commission correctly concludes in the *R&O*,¹² ultimate responsibility for compliance with the EAS rules should rest with satellite licensees, over whom the FCC always has jurisdiction.

Further, the FSS Group's suggestion that the Commission should reinstate the licensing requirement for earth stations used to receive video programming service would needlessly reverse nearly three decades of deregulation of receive-only facilities.¹³ Indeed, the Commission recently rejected a similar proposal by FSS operators when it declined to impose

⁹ See Petition at 10.

¹⁰ See *id.*

¹¹ See 47 U.S.C. § 301.

¹² See *R&O*, n.152.

¹³ See Petition at n.13.

DBS public interest obligations directly on non-licensee programming distributors.¹⁴ The Commission held in that proceeding that satellite licensees ultimately must be responsible for complying with the public interest requirements, both for ease of administration and effective enforcement of the rules.¹⁵ Nevertheless, just as in this case, the Commission established a procedure whereby satellite operators may delegate their public interest responsibilities and reasonably rely on compliance certifications from programming distributors.¹⁶ This procedure has worked effectively in implementing DBS public interest obligations and it will work just as effectively in the EAS context.

Finally, the statutory provisions from which the Commission derives its EAS authority do not provide an adequate basis for imposing EAS requirements on non-licensee programming distributors.¹⁷ Although the Commission historically has used these provisions to impose EAS

¹⁴ See *Direct Broadcast Satellite Public Interest Obligations*, Second Order on Reconsideration of First Report and Order, 19 FCC Rcd 5647, ¶¶ 14-15 (2004).

¹⁵ See *id.* The FSS Group argues that the Commission's holding in the DBS public interest proceeding should be distinguished from this proceeding because there is no statutory directive on EAS specifically applicable to FSS-DTH services and therefore "the Commission is free to implement the EAS requirements in the manner it sees fit." Petition at n.10. As discussed herein, this argument fails because the Commission's statutory authority for adopting EAS requirements is insufficient to reach non-licensee programming distributors that are not otherwise regulated by the Commission.

¹⁶ See *id.*

¹⁷ The Commission derives its authority to regulate emergency alerts and warnings from Sections 1, 4(i) and (o), 303(r), and 706 of the Communications Act of 1934, as amended. 47 U.S.C. §§ 151 (stating that the Commission was created for the purposes of, *inter alia*, national defense and promoting safety of life and property through the use of wire and radio communication), 154(i) and (o) (providing a general grant of authority to perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with the Act, as may be necessary in the execution of the Commission's functions; and providing the Commission with authority to investigate, study, and propose best methods to resolve any and all problems preventing the maximum effective use of radio and wire communications in connection with safety of life and property), 303(r) (generally granting rulemaking authority to the Commission), 606 (granting

requirements on FCC licensees, there is no suggestion in the statutory grant that the Commission is empowered to reach entities not otherwise directly regulated by the FCC. To read these provisions as granting EAS authority over otherwise unregulated entities would exceed the scope of the Commission's authority under the statute.¹⁸

In sum, there is no statutory basis, nor is there any public interest need, for the Commission to adopt the FSS Group's proposal to apply the EAS rules directly to DTH-FSS programming distributors.

Respectfully submitted,

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specific, communications-related powers to the President in time of war or national emergency; in such event, the President may, for example, take control of, or suspend or amend the rules and regulations applicable to, any or all cable and radio and television broadcast stations within the Commission's jurisdiction).

¹⁸ *Cf., e.g., Am. Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005) (FCC plainly exceeded the scope of its general jurisdictional grant under Title I of the Communications Act of 1934 when it issued broadcast flag regulations on products not engaged in "communication by wire or radio.").

CERTIFICATE OF SERVICE

I, Michael Hartman, of DIRECTV Latin America, LLC, certify that a copy of the foregoing Opposition to Petition for Partial Reconsideration of DIRECTV Latin America, LLC, was served, except as otherwise noted, via first-class mail on this 2nd day of March 2006, upon the following:

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